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Excerpts from WG I M-139, September 24, 1957

1. COCOM Listing Criteria.

(Ref. WG I D-77; WG I D-77/1; ED/EC OM 23)

A. Consideration of Chairman's Draft Memorandum - WG I D-77/1.

The State member reported that the proposed Criterion (c) set forth in the Chairman's memorandum agreed in substance with State's interpretation of the present Criterion (c). If, however, this was to be formalized and set forth in precise language as an interpretation of the present Criterion (c), then State would wish to discuss it from the standpoint of phraseology because they felt that there were certain minor phrases which could be clarified.

The Chairman advised that he would indicate to the Executive Committee that in substance State, ICA, and MDAC agreed that Criterion (c) should be interpreted along the lines proposed in his memorandum, and that Defense and Commerce did not agree with this interpretation. He thought there was little to be gained from a prolonged discussion of each word since it was clear from the Group's last discussion of this subject that some members agreed in principle and others disagreed in principle.

B. Consideration of Draft Revised Language for COCOM Criteria attached to ED/EC OM-23.

The Commerce member referred to the EC's directive to WG I set forth in ED/EC OM-23, and advised that the proposed draft language for Criteria (a), (b), and (c) attached to OM-23 represented what Commerce felt was a reflection of the interpretation which the U.S. has given to the existing COCOM criteria since 1954.

The Defense member said he gathered that it was not up to this Committee to determine whether or not these proposals for revised criteria were to be submitted to COCOM or the CG. On the other hand, he was concerned if it was a firm fixed position on the part of several agencies that the proposals for revised criteria would not in any event be introduced in COCOM or the CG, because the exercise then seemed to be somewhat foolish.

The State member advised that in the light of the comments made at the last meeting and positions taken by other members at that time, State had reviewed its position carefully. At the present time he was in full agreement that it was not the function of this Group to address itself to the question of whether or not these criteria are to be submitted to COCOM. State did feel that the important issue that was facing all of us was to develop a position on a list so that we could be prepared for any possible proposal that might be made by some other PC. They also felt that it was difficult to judge the acceptability or the utility of any set of criteria until we had some indication of how it would work in practice. If language was being

~~SECRET~~

SECRET

-2-

used to reframe existing criteria since 1954, any wording which tended to or could be considered as making a substantive change in the criteria should be annotated and citations given to show that it did in fact reflect U.S. interpretations in the past of the existing criteria. He was perfectly willing to consider the proposals submitted under the cover of ED/EC Om-23 to determine (1) whether they were responsive to the EC instruction and (2) whether if they were responsive, they were acceptable as a revision of the existing criteria. Since there seemed to be agreement that it was not the Group's function to consider whether this language should or should not be submitted to COCOM, his consideration of this paper naturally should not be construed as constituting State concurrence to something not under consideration nor should it be considered as a precedent for any State position which might be adopted later. With respect to the acceptability of the proposed criteria, he did feel that it would be difficult to determine that without some examples or an indication of their application. In response to a question by the Defense member, he stated that if State were asked its evaluation of the COCOM situation, State would at this time advise against any proposals. This did not mean that under no circumstances would State agree to the submission of proposals to COCOM for revision of the criteria or that there would be no proposals for revising the criteria that State would support. State's present evaluation and advice was that this was not the time to do it. He reiterated though that it was not the function of the Group at the present time to discuss that problem.

The Commerce member remarked that the State member's comments clarified the situation and brought the Group's consideration within the concept of the EC directive to it, which related to the technical advisability, without other considerations. In line with this directive, he felt that the revised language attached to OM-23 was technically advisable as a reframing of the existing criteria in order to reflect the interpretation which this Government has given to the existing criteria since 1954.

The State member noted his earlier comment that it was difficult to look at the criteria as revised in this proposal and to tell simply by examining them on a word for word basis whether or not they are in fact responsive to the instruction in that they reflect past and present U.S. interpretations of the criteria. What he would like to see and what would make it easier for State at least to understand what had been done would be to have these criteria applied, and then to discuss whether or not the changes did in fact make a difference and whether they were really the same criteria in revised form or not. A sample category of the lists could be gone over in terms of the list review to see what would happen under these criteria -- perhaps a category which had already been reviewed by CIA to see whether the results were the same. Under any criteria there was a possibility of ambiguities, differing interpretations, and if we were going to come up with that situation, he thought we should know it before we went any further.

The Commerce member pointed out that their proposals made a point of technical data which in the past had only been effective in our controls to the extent that we had AP 5. Now that would be particularized. With reference to the language proposed in criterion (a) "are expected to be used by the Sino-Soviet bloc", he recalled that one of the particular difficulties we had had in the past had been

SECRET

SECRET

-3-

the fact that PCs are inclined to weigh a particular item against its use pattern in the West. Commerce was saying that it had to be weighed also and most particularly against the use pattern that would apply in the Sino-Soviet bloc.

The Chairman referred to the fact that the proposal said "expected" use and not the actual use. The Commerce member replied that, without derogation to the intelligence community, he thought even they would be willing to concede that in some instances it was quite difficult to indicate precise intelligence as to the use. It had to be a matter of expectation. The Chairman thought that in most cases the intelligence community had been and was able to give us quite good use patterns of materials. Even if that were not true, he wondered whether this language if adopted would not lead to more subjective and differing interpretations than we now have. He thought the deletion of the words "expected to be" would be one improvement that could be made in the Commerce proposal.

The Defense member remarked that in considering the bloc as a whole, the first priority was in connection with military priorities. Regarding China, they were having an extremely difficult time in trying to build up an industrial base for the same purpose for which the Soviets wanted it -- to build up a war machine. It was "expected" and that was why the word "expected" was used here. When the Sino-Soviet bloc purchased an item which was considered to be of strategic importance, they were not buying it for consumer use but were buying it for strategic reasons, and it appeared to him that, when looked at in that context, the word "expected" was not out of order.

The State member inquired whether the fact that a machine which could be used for military purposes was being purchased by the Sino-Soviet bloc was sufficient to assume that it would be used for that purpose, and whether this was the presumption under which we had always operated. The Chairman stated that we have not operated under this presumption.

The Chairman thought that the inclusion of technical data and services in the proposed criteria was a matter which should be discussed. He thought all were agreed that when it applied to strategic uses or materials technical data did need to be controlled. The issue here was how and where it should be controlled, and it seemed to him to be perhaps a misunderstanding of the purpose and function of the criteria to insert technical data in the criteria themselves, because the criteria were standards for listing items or materials on the lists. It seemed to him that it did not serve much purpose to mention technical data in the criteria unless there was some way of listing specific items of technical data on the lists, and even if this were feasible, it might not be desirable.

The Commerce member reminded that so long as we labored under AP 5, which was merely a caveat to PCs, two things happened. There was a direct relationship primarily only to those items that were on the control lists and we did not have a precise specified control on certain technical data as such.

The Chairman inquired whether Commerce had given any study yet to the practical feasibility of being able to list specific items of technical production data on the

SECRET

SECRET

-4-

lists in a manner that would limit the listings to the objective of strategic controls and would not be so broad in general that it would encompass all kinds of technical data on a particular item which would have no strategic application.

The Commerce member advised that Commerce felt that from the technical aspects, the listing of technical data did not present a monstrous problem which could not be overcome. Commerce felt that technically it could be done. He emphasized that it was the prototypes and the technical data which were important.

The Chairman said he thought it was an almost insoluble problem to be able to list technical data in such a way that it would be acceptable within the multilateral control program or within our economic defense policy, without of necessity making it so broad that it would go far beyond the objectives of strategic controls. Perhaps if we had some samples of the kind of listings which might be made under these proposed criteria, we might be better able to judge the feasibility of making such listings. Also he wondered how it was planned to encompass new data that had not yet been invented.

The Commerce member advised that he had not prepared himself in such a way as to be able to give the Chairman such information because he had not understood that that was a part of the assignment. In addition to giving the Group Commerce's judgment that it was technically feasible and practical and could be done, he reminded that the Office of Munitions Control and Commerce were exercising controls over technical data, and that other countries were supposed to be doing so under AP 5. The Chairman observed that this was being done in the U.S. on a case by case basis under general rules which covered all data of certain types. Specific technical data which are controlled are not on any specific list. He also pointed out that the way in which State and Commerce controlled technical data now was more analogous to the way it was being controlled by COCOM under AP 5 than the manner proposed here.

The Commerce member noted that he had given his concept of how the proposal would work. If more definitive language was wanted with regard to certain examples, he could go back and get them and submit them later. He noted that so far as determining the scope, variety, and extent to which such data would be listed, that would still be in the same context required by the language in the proposals.

The Chairman asked whether the proposal was not intended as a broadening of the base by which items could be listed. The Commerce member said that it was not because this was in the context of the Sino-Soviet bloc. The Defense member said they had interpreted "military capabilities" to be "forces in being" and for that reason limited. They were proposing to broaden it to the extent that it meant support for the war effort. The Commerce member stated that it was not a broadening of our interpretation since 1954. Our difficulties on rolling mills and securing control of certain vessels indicated that we had had an interpretation to cover items which would support the war effort. "Industrial" was included because we now had the Sino-Soviet bloc as the complete target. It would not, however, encompass the entire basic economy. It was the industrial complex which lent support to and was in effect an indirect military complex.

SECRET

SECRET

-5-

The MDAC member remarked that "military-industrial" suggested that a whole new area of industrial items would be covered not related to "military capabilities" because items critical in relation to military capabilities were already covered.

The ICA member said she gathered these words were included because of the inclusion of the Sino bloc, and therefore it might be interpreted as a broadening for the European Soviet bloc.

After further discussion the Chairman stated that the issue here on which we had to report to the EC was whether these proposals reflected the interpretation which the U.S. had given to the existing criteria since 1954. It seemed that some questions had been raised which would indicate in the minds of some members that these proposals would substantially broaden or at least form the basis for a substantial broadening of the criteria and the resulting control lists. If this were true, then we would have to conclude that the proposals did not reflect the interpretation that the U.S. had placed on the criteria since 1954. He asked the members' views on this point.

The ICA member thought the proposals made the criteria broader than the U.S. has used in the past.

The State member felt that the proposed revised criteria did in fact broaden the interpretation that the U.S. had given in the past. He repeated, however, that it was difficult to make a judgment without seeing a specific application of these criteria to a given list.

The Chairman reported that he would advise the EC that State, ICA and MDAC felt the draft revised language for COCOM criteria, extracted from a paper submitted by an EC member (ED/EC OM-23), did not reflect the interpretation which the U.S. had given to existing criteria since 1954, and that Commerce and Defense felt that it did. At the same time he would report the views previously expressed by the members on the U.S. interpretation of Criterion (c) contained in WG I D-77/1.

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